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CITATIONS

286-549—68

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 978

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION, PETITIONER

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The Washington Metropolitan Area Transit Commission (WMATC) was created to end "divided regulatory responsibility" over "mass transit service" in the Washington, D.C., metropolitan area. The question here is whether Congress, in assenting to its creation, intended that WMATC should also exercise jurisdiction over a very different kind of service, bearing no relation to its primary function, which is sought to be provided in an area subject to the exclusive authority of the National Park Service.

STATEMENT

In the Act of July 1, 1898, 30 Stat. 570, Congress placed the park system of the District of Columbia under the "exclusive charge and control" of the Chief of Engineers. This authority devolved to the Director of Public Buildings and Public Parks in the Act of February 26, 1925, 43 Stat. 983, and to the National Park Service [1] by virtue of Executive Order No. 6166, dated June 10, 1933, 5 U.S.C. 132 (note) (D.C. Code, Sec. 8–108). Lands required for additional parks in the District of Columbia, acquired by the National Capital Planning Commission pursuant to the Act of June 6, 1924, 43 Stat. 463, are also administered exclusively by the National Park Service, except such areas as may be assigned to the District of Columbia for playground purposes.

The original authority of the Public Utilities Commission of the District of Columbia to control traffic and bus operations in the District stems from the Act of February 27, 1931, 46 Stat. 1424, which, in turn, was framed as an amendment to the District of Columbia Traffic Act of 1925, 43 Stat. 1119. The latter statute contains a provision to the effect that:

> Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the Dis-

[1] The National Park Service was created in 1916 (39 Stat. 535) as an agency of the Department of the Interior to "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations * * *" (16 U.S.C. 1).

> trict, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control. * * * [Section 16(b), Act of March 3, 1925, 43 Stat. 1126 (D.C. Code, Sec. 40–613 (1961 ed.)).]

It was against this background—a long-established and clearly demarcated separation of national park areas from the jurisdiction of District of Columbia agencies (including the Public Utilities Commission)—that Congress, in 1960, approved a compact negotiated by the Commonwealth of Virginia, the State of Maryland and the District of Columbia, designed to end "divided regulatory responsibility" over "mass transit service" in the Washington area. The compact sought to solve this problem by creating a commission comprised of one representative from each of the negotiating parties, with jurisdiction to establish rates and routes and otherwise regulate public transportation throughout the metropolitan area. The compact (74 Stat. 1031, 1036) excepts "transportation by the Federal Government" and Section 3 of the ratifying Act (74 Stat. 1050) declares that neither the Act nor the compact "shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities."

Until the number of visitors to the national park areas in the District of Columbia reached problem

proportions, the National Park Service did not concern itself with means of transportation within the park enclaves. The public has traditionally reached these areas on foot, by private automobile or by sightseeing buses. Parking and use of park roads have been permitted either by sufferance or by special permit issued by the National Park Service. Because sightseeing bus companies operated throughout the city and only incidentally in the national park areas, they were licensed by the District of Columbia Public Utilities Commission or by its successor, WMATC.

By 1965, however, the number of visitors to the national park areas in Washington amounted to twelve million, with every indication that that figure would increase materially each year. This great increase in numbers, combined with the limited roadway and parking space available, made it imperative that the National Park Service take appropriate action to facilitate the movement of people within the Mall and the adjoining national park areas. In addition, a special need exists to provide lectures on the historical background and significance of each point of interest in order to give greater meaning to that "trip to Washington" which has become a must for most of our younger citizens, and many of their parents.

To meet that need, the National Park Service, in 1966, established an experimental "minibus" service whereby visitors could board a conveyance at the foot of the Capitol and eventually visit all of the monuments and points of interest in the Mall area. When this experiment proved a success, bids were solicited

from all interested parties for the providing of a similar service augmented by trained commentators capable of giving an interpretive discussion of each point of interest.[2] Of the bids received, that of petitioner Universal Interpretive Shuttle Corporation was the most satisfactory, and, on March 24, 1967, an interim short-term contract was awarded to that company. The basic ten-year contract (set out in Pet. App. C) was thereafter transmitted to Congress under 16 U.S.C. 17b–1, where no action was taken, and the agreement accordingly became effective. Under both the interim contract and the identical final form, the Secretary of the Interior is authorized to determine (a) the routes to be taken by the vehicles, (b) the type and number of mobile units to be furnished, (c) the number and schedule of trips to be made, (d) the rates to be charged and (e) the content of the interpretive narrations. In short, the contract contemplates continuous,

[2] The National Park Service, over a long period of time, has furnished transportation services in other national parks, by the use of contract carriers, pursuant to the authority contained in 16 U.S.C. 17b. This has always been a necessity in the more remote, larger park areas of the West. The States have not purported to assert control over these contract operations, which are specifically exempted from operation of the Interstate Commerce Act, 49 U.S.C. 303(b)(4). Thus, where a need for intra-park transportation services has existed, such services have traditionally been furnished by contracting with private transportation companies, free of control by local utility bodies or by the Interstate Commerce Commission. Moreover, legislation in 1965 (79 Stat. 969) expressly directed the Secretary of the Interior to "take such action as may be appropriate to encourage and enable private persons and corporations * * * to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service" (16 U.S.C. (Supp. II) 20a).

day-to-day supervision of the concessionaire's performance by the National Park Service (see Pet. 21).[3]

Shortly after the interim contract was awarded, WMATC brought suit against the successful concessionaire to enjoin operations under the contract until such time as the concessionaire had obtained a certificate of public convenience and necessity from that body. The United States filed a representation of interest and presented evidence in support of the defendant. The district court wrote an extensive opinion which thoroughly explored the various arguments made, concluded that a certificate of public convenience and necessity was not required, and dismissed the action (Pet. App. B). The court of appeals, with one judge dissenting, reversed, writing no opinion but instead entering an order stating that "[t]he various relevant statutory provisions, construed in relation one to the other," do not afford authority for the concessionaire to provide the contemplated service without a WMATC certificate (Pet. App. A). A petition for rehearing *en banc* was denied, with two judges dissenting.

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[3] More broadly, the National Park Service has developed a long-range master plan relating to the Mall which has been approved in substance by the National Capital Planning Commission. That plan contemplates the eventual location of parking and cross-streets underground and conversion of the central Mall area into a large open space reserved for pedestrians. An integral part of the plan calls for the elimination of all vehicular traffic in the area other than that of the type contemplated by the instant arrangement (see Pet. 6, 10).

DISCUSSION

Congress has consistently maintained a basic dichotomy between municipal and national affairs in legislating with respect to the District of Columbia. The decision of the court of appeals has upset this scheme by holding that a purely municipal law curtails the long-standing authority of the Secretary of the Interior in administering national park areas in the District of Columbia.[4] The question is a national not a local one. The persons who are affected by this decision are not primarily local residents of the Washington metropolitan area, but rather the millions of visitors from the 50 States and various foreign countries who come to Washington to visit the monuments of the past and the symbols of the present that can exist only in a nation's seat of government.

First and foremost, the District of Columbia is the *national* capital, and control of its major parks has always been vested in either the Corps of Engineers or the National Park Service. In particular, the great Mall in the city of Washington is a national park area ringed with buildings and monuments that annually attract millions of deeply interested and enthusiastic visitors. Of course, the District of Columbia, with its environs, is also the home of thousands of people who must live near where they work. Obviously, the Wash-

[4] As pointed out by the district court (Pet. App. 6, n. 1), virtually all of the contemplated route of the vehicles to be used in providing the interpretive shuttle service lies within national park areas and includes, in the main, the various streets which are located within the central Mall area.

ington area has distinct municipal transportation problems. With three separate sovereigns involved, the resolution of these problems requires careful cooperation. Such transportation problems, however, remain essentially local and their solution has little to do with the unique national status of Washington as the capital city.

Indeed, it is this national interest in the effective administration of the national park areas in the District of Columbia, for the benefit of all Americans, and foreign visitors as well, that is involved in the instant case. If the court below is correct, the tripartite WMATC, rather than the Secretary of the Interior, is presently authorized to determine (a) whether any transportation facilities are required within the national park areas, (b) the individual or corporation to whom the concession to provide such facilities must be given, (c) the type of service, the type of equipment and the routes to be followed, (d) the rates to be charged, and (e) the numerous other details inherent in a certificate of public convenience and necessity. It is not difficult to conceive of the confusion and conflict which would predictably result from a bifurcation of authority over non-commuter transportation in the national park areas. In addition, one who applies for a certificate of public convenience and necessity from WMATC might well become involved in extensive proceedings entailing delay and the introduction of issues that are purely extraneous to the concerns of the Secretary of the Interior. In requiring that a procedure established for a purely municipal purpose be followed to effectuate a considered decision of the Secretary relating to areas plainly

within his jurisdiction, the decision of the court below seriously impairs the Secretary's ability to give enlightened direction in a matter of important interest to the American public generally.

Assertion of jurisdiction by WMATC was apparently prompted solely by a literal reading of language in the compact which states that it shall apply to all transportation for hire "in the Metropolitan District." Technically, of course, the national park areas in question are within "the Metropolitan District," and it is a conceivable, though hardly necessary, conclusion that the contemplated service constitutes "transportation for hire" within the meaning of the compact. But that construction gives no scope to the exception of "transportation by the Federal government" in the same section of the compact, nor to the reference to the police powers of the Director of the National Park Service in another section.[5] Moreover, Congress did not purport, in approving the compact, to repeal existing legislation giving the National Park Service "exclusive charge and control" over the capital city's park areas.[6] Rather, a fair

[5] The term "police powers" necessarily includes the full scope of the existing authority delegated by Congress to an executive agency to make rules and regulations relating to property of the United States. *Camfield* v. *United States*, 167 U.S. 518, 525; *State of Tennessee* v. *United States*, 256 F. 2d 244, 258 (C.A. 6).

[6] And since acts of Congress which are assertedly in conflict should be interpreted, if possible, to provide a harmonious result (see *United States* v. *Wittek*, 337 U.S. 346, 358-360), the obvious intention of the lawmaker—to provide a solution for pressing interstate mass transit problems by assenting to the creation of the WMATC—should here prevail over the literal language of the compact, if indeed any actual conflict is presented (see *Lynch* v. *Overholser*, 369 U.S. 705, 710).

reading of the language of the compact is that Congress intended WMATC to have authority to accomplish the purposes for which it was established, but not jurisdiction over wholly extraneous matters, particularly where such authority would have a detrimental effect on a subject of national, not merely local, concern.

The question presented is an important one. It does not involve merely a local controversy. Rather, the issue is of national concern, and directly affects the power of the Secretary of the Interior to administer national park areas in the interest of citizens from every part of the nation, and foreign visitors as well. In our view, the question was wrongly decided by the court below. We urge that the petition for a writ of certiorari be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968